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SENATE

REPORT
98-565

CIVIL AERONAUTICS SUNSET ACT OF 1984

JULY 25 (legislative day, JULY 23), 1984.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2796]

The Committee on Commerce, Science, and Transportation to which was referred the bill (S. 2796) to amend the Federal Aviation Act of 1958 to terminate certain functions of the Civil Aeronautics Board, to transfer certain functions of the Board to the Secretary of Transportation, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF BILL

The primary objective of this legislation is to provide for an orderly sunset of the Civil Aeronautics Board (CAB) on January 1, 1985. Most of the current functions of the CAB will be assumed by the Department of Transportation (DOT) by virtue of this legislation.

BACKGROUND AND NEEDS

The Airline Deregulation Act of 1978 (ADA) provided, among other things, for the sunset of the CAB on January 1, 1985. The functions of the CAB which were not terminated by the ADA were to be sent to various Federal agencies. The authority to grant antitrust immunity was to go to the Department of Justice. No provisions were included in the ADA concerning the CAB's consumer protection activities. Most other functions were to be transferred to DOT.

S. 2796 was motivated primarily by concern over what would happen to the consumer protection work of the CAB upon sunset. This work has resulted in rules such as those dealing with smoking, denied boarding compensation, public charters, baggage liability and pending rules on computer reservation systems. As stated above, the ADA did not

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address the question of what would happen to the CAB's authority in these areas. In the absence of any specific provisions dealing with the issue, many people, including the current administration, believed that the Federal Trade Commission (FTC) could use its general powers to police airline consumer matters.

Three principal problems were perceived with the lack of a plan for transferring consumer protection authority upon sunset. First, through section 5 of the Federal Trade Commission Act, there is a statutory bar preventing the FTC from dealing in airline matters. DOT's legal analysis concluding that the bar would dissolve upon sunset of the CAB has been widely viewed as an open invitation to litigation. Second, existing CAB rules would *not* transfer to the FTC under the ADA. The third perceived problem in the consumer area arose from the fact that the ADA provided for international and Essential Air Service consumer functions to be performed by DOT. Thus, two separate Federal entities could be formulating aviation consumer protection rules beginning in 1985.

Legislative History

S. 2796 was introduced by Senator Kassebaum on June 27, 1984. It is virtually identical to H.R. 5297, which passed the House on June 5, 1984. One hearing was held on the subject of CAB sunset by the Aviation Subcommittee on June 21, 1984. The Committee has also held hearings on sunset in previous years. The 1984 hearing focused solely on the issue of consumer affairs functions.

On June 28, 1984, the Committee ordered S. 2796 reported with an amendment in the nature of a substitute. The bill as reported differed from S. 2796 as introduced in three areas:

1. Provisions were added dealing with Essential Air Service in Alaska;
2. DOT would be allowed to initiate studies into situations perceived as inconsistent with the policy statements contained in the Federal Aviation Act of 1958; and
3. DOT would be required to perform a study of improved methods of passenger transportation to Washington Dulles Airport.

Summary of Major Provisions

As reported, S. 2796 would:

1. Send the following functions to DOT (all section references are to the Federal Aviation Act of 1958, unless otherwise noted):
   a. section 408—review and approval authority over the consolidation, merger and acquisition of control of air carriers;
   b. section 409—authority over interlocking relationships among air carriers;
   c. section 412—authority to approve certain cooperative agreements among air carriers; and
   d. section 414—the authority to grant antitrust immunity to the agreements mentioned above.
2. Preserve the CAB's rulemaking authority under section 204, which would otherwise sunset.

3. Sunset all merger and antitrust exemption authority effective January 1, 1989.

4. Transfer section 401(d) to the DOT. This function consists of the CAB's duty to determine whether an air carrier is "fit, willing, and able" to perform its "duties."

5. Transfer the section 411 authority to prevent unfair or deceptive practices and the 404(a) authority to assure "safe and adequate service" to DOT. This is the core of the so-called "consumer" authority which the ADA does not address.

6. Provide that DOT will continue to collect data on the airline industry. This data is specified to include, at a minimum, origin and destination data and "service segment" data (number of passengers traveling between points).

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 24, 1984.

Hon. Bob Packwood,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 2796, the Civil Aeronautics Board Sunset Act of 1984, as ordered reported by the Senate Committee on Commerce, Science and Transportation, June 28, 1984. We estimate that the feasibility study required by the bill would cost approximately $200,000, primarily in fiscal year 1985. There is no basis for estimating the cost of the provision affecting Alaska air service, and other provisions of the bill are not expected to result in significant costs to the federal government. S. 2796 will not affect the budgets of state and local governments.

S. 2796 would terminate certain functions of the Civil Aeronautics Board (CAB) and transfer other functions to the Department of Transportation (DOT) and other federal agencies. The bill also provides for the transfer of CAB personnel, property, accounts and unexpended balances to the DOT. Most of these changes would take effect on January 1, 1985. These provisions would result in no significant cost to the federal government, because the transferred functions would continue under current law.

The bill also requires that the State of Alaska and local communities approve any changes related to aircraft size which are made to the essential air service program. Under this program, the Civil Aeronautics Board subsidizes airlines selected by the Board to provide a guaranteed level of air service to eligible small communities. Under current law, if the Board determines that a community could be adequately served by smaller aircraft than are now used, it could

substitute smaller aircraft and decrease the subsidy. S. 2796 precludes the Board from downgrading the size of aircraft in subsidized services in Alaska, without the State's agreement. This provision would result in costs to the federal government, if, in the absence of this bill, the Board would have chosen to downgrade the size of aircraft to certain communities, thereby reducing the subsidy. These costs are impossible to estimate, however, because it is not certain what action the Board would take without this bill.

S. 2796 also requires the Secretary of Transportation to study the feasibility of constructing a rail rapid transit line between the West Falls Church, Virginia, station of the Washington, DC metrorail system and Dulles International Airport in Virginia. Based on information from the Department of Transportation, we estimate that this study will cost about $200,000, primarily in fiscal year 1985.

If you wish further details on this estimate, we will, be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER,
Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

Most of the provisions of S. 2796, as reported, simply "rearrange" functions of the CAB which the ADA does not terminate on January 1, 1985. As to these provisions, the legislation will have no significant regulatory impact.

The only regulatory impact of S. 2796 occurs in those areas that would have sunsetted by the terms of the ADA, but are preserved by this legislation. There are basically two such areas.

The first consists of the preservation of section 401(d) "fitness" determinations. This would require DOT to determine, prior to allowing a new carrier to begin operations, whether it is "fit, willing and able" to operate. This test's sole purpose is to prevent unscrupulous and slipshod people from being allowed to defraud and endanger the flying public. The Committee does not believe that the Federal Aviation Administration safety examinations are sufficient to carry out this important function. The goal is to prevent people without adequate financial and managerial qualifications from beginning operations, instead of shutting them down after they have defrauded or perhaps killed unsuspecting consumers. The Committee strongly believes, however, that the fitness determination should *not* be used as a tool to economically regu late the airline industry, or to control airline entry selectively such as was done with the previous "public convenience and necessity" test.

The second area in which S. 2796 will have a regulatory impact is data collection. Under the terms of the ADA, all authority to collect data from the airlines (other than that required by Securities Exchange Comission rules) would expire. The Committee believes that certain data should remain available in order to assess the ongoing effects of airline deregulation. Thus, the bill directs DOT to continue to collect, at a minimum, origin and destination data and "service segment" data.

1. NUMBER OF PERSONS COVERED

Those seeking to enter the airline industry are the only ones affected by the revival of the "fitness" determination. In 1983, approximately 90 entities sought to begin operations. All existing airlines would be required to continue to submit the data described above. At the present time, this would consist of approximately 450 entities.

2. ECONOMIC IMPACT

The requirement of a "fitness" determination will increase the economic costs associated with starting up airline operations. Since the costs of such a proceeding depend upon the problems encountered, it is not possible to determine the financial burden on any particular applicant. The data collection provisions simply require the airline to submit to DOT data that it collects anyway for internal use. Thus, the costs associated with these provisions should be minimal.

3. PERSONAL PRIVACY

The fitness determination requires the examination of financial and other data relating to those in control of the prospective operator. Other than this, S. 2796 should have no effect on the personal privacy of any individual.

4. PAPFRWORK

The fitness determination will result in a one-time increase in the amount of paperwork required to be submitted by a person seeking to begin airline operations. The requirement to submit data to DOT will also increase required paperwork.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

Provides that the Act may be cited as the "Civil Aeronautics Board Sunset Act of 1984."

SECTION 2.—AMENDMENT OF FEDERAL AVIATION ACT OF 1958

Provides that unless otherwise expressly stated, all references to provisions of law in this legislation shall be considered to be references to the Federal Aviation Act of 1958.

SECTION 3.—TERMINATION AND TRANSFER OF FUNCTIONS UNDER THE FEDERAL AVIATION ACT OF 1958

(a) Amends Federal Aviation Act of 1958 to provide that after the sunset of the CAB on December 31, 1984, CAB's authority under sections 408 (consolidation, merger, and acquisition of control), 409 (interlocking relationships), and section 412 (pooling and other agreements), and CAB's related authority under section 414 (antitrust exemption) will be administered by the DOT. Under current law, the Department of Justice would take over this authority after sunset of CAB.

(b) Amends the Federal Aviation Act to provide that there will be no termination of the authority of the CAB under section 204 of the act which includes CAB's rulemaking authority. CAB's authority under section 204 will be transferred to the DOT on January 1, 1985.

(c) Provides that specified provisions of the Federal Aviation Act will cease to be in effect on January 1, 1985. Many of the provisions have already ceased to be effective by operation of the Deregulation Act of 1978 for interstate or overseas transportation of persons and by operation of CAB regulation for interstate and overseas transportation of property.

The following provisions of the Federal Aviation Act will cease to be in effect for interstate and overseas air transportation after January 1, 1985: Sections 401 (l) and (m) which require certificated air carriers to carry mail; sections 405 (b), (c), and (d) which give the Postal Service and CAB various authority to require the carriage of mail; section 403, which requires air carriers to file tariffs and imposes related requirements; and section 404, which requires air carriers to provide reasonable through service and joint fares and prohibits unjust discrimination (this section continues in effect insofar as it requires air carriers to provide safe and adequate service).

The following provisions of the Federal Aviation Act will cease to be in effect for transportation after January 1, 1985: Sections 407 (b) and (c), which impose reporting requirements relating to stock ownership of air carriers and stock ownership by air carrier officers and directors; section 410, which gives CAB authority over applications for loans and financial aid from the U.S. Government; section 417, which authorizes CAB to allow charter air carriers to provide scheduled service in specified circumstances; and sections 1002 (d), (e), (g), (h), and (i) (except insofar as such sections relate to foreign air transportation) which give CAB regulatory authority over air carrier rates and fares.

This section further provides that section 412 of the Federal Aviation Act, insofar as it relates to interstate and overseas air transportation, and sections 408 and 409 of the Federal Aviation Act, and related authority under section 414 to award antitrust immunity, shall cease to be in effect on January 1, 1989. This sunset date will give Congress an opportunity to consider at that time whether there is still a need for administrative regulation of air carrier mergers and acquisitions and whether there is still a need for statutory authority to grant certain air carrier transactions immunity from the antitrust laws. Section 6 of this bill requires DOT to submit a report and recommendations to Congress on this issue.

(d) Provides that all authority of CAB which this act does not terminate on January 1, 1985, and which is not otherwise terminated or transferred, will be transferred to DOT on January 1, 1985. The authority transferred to DOT under this section includes the CAB's authority under section 404 of the act, to ensure safe and adequate service; the CAB's authority under section 411 of the act, to prevent unfair or deceptive practices or unfair methods of competition in air transportation; and the CAB's responsibilities under section 401 of the act, to ensure that carriers providing interstate or overseas air transportation are fit, willing, and able to perform the transportation proposed in their application and to conform to the requirements of the Federal Aviation Act and regulations adopted thereunder.

Existing law transfers to DOT CAB's authority with respect to foreign air transportation and CAB's authority under section 419 of the act to establish a program for small community air service. Existing law also transfers to the U.S. Postal Service CAB's authority to determine rates for the carriage of mail in interstate and overseas air transportation. The Postal Service is to exercise this authority through negotiations or competitive bidding.

SECTION 4. TRANSFERS OF FUNCTIONS UNDER OTHER LAWS

Transfers to DOT the authority of CAB under specified laws other than the Federal Aviation Act. These are essentially conforming provisions intended to make the text of these statutes as clear as possible.

SECTION 5.—COLLECTION OF DATA

Amends the authority of the DOT to collect information on civil aeronautics to require that after January 1, 1985, the Department will, at a minimum, continue to collect information on the origin and destination of passengers in interstate and overseas transportation and information on the number of passengers traveling between points in interstate and overseas air transportation.

SECTION 6.—REPORT ON AIR CARRIER AGREEMENTS

Requires the Secretary of Transportation to submit a report to the appropriate committees of Congress not later than July 1, 1987, on the administration of sections 408 and 409, 412 and 414, of the Federal Aviation Act and recommendations as to whether these authorities shall be continued.

SECTION 7.—INCORPORATION BY REFERENCE

Amends section 411 of the Federal Aviation Act to clarify CAB's authority to issue regulations establishing uniform requirements governing notice to passengers of terms of the contract between an airline and its passengers which are incorporated by reference in a ticket. CAB has issued such regulations, ER–1302, 47 FR 52134, November 19, 1982, under authority of sections 204, 404, and 411 of the Federal Aviation Act. The amendment in this section clarifies that issuance of this type of regulation is a proper exercise of CAB authority. This amendment should not be construed as an indication that the sponsors of the bill consider that the regulations already enacted exceed CAB's authority under the statutory provisions cited by CAB. Also, the provision should not be read to allow incorporation by reference of terms in contravention of CAB regulations.

SECTION 8.—REFERENCES TO CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

Provides that any reference in any law to a certificate of public convenience and necessity shall be deemed to refer to a certificate issued under Section 401 of the Federal Aviation Act. This section clarifies that the Deregulation Act of 1978, which ended the requirement that the CAB make a public convenience and necessity finding before

issuing a section 401 certificate for interstate or overseas transportation, was not intended to change other statutes other than the Federal Aviation Act which refer to certificates of public convenience and necessity held by air carrier.

SECTION 9.—MISCELLANEOUS AMENDMENTS

These amendments conform the regulatory format in the Federal Aviation Act for interstate and overseas cargo transportation with the regulatory format governing interstate and overseas passenger transportation. Conforming changes are also made in a number of other statutes to reflect the termination of the CAB and the transfer of CAB authority to DOT after January 1, 1985. The Postal Service's contracting authority in title 39 of the United States Code is modified to conform to the provisions in the Deregulation Act authorizing the Postal Service to use competitive bidding or negotiations in place of CAB ratemaking for interstate or overseas mail transportation.

SECTION 10.—TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL

This section contains provisions governing the transfer and allocation of appropriations and personnel from the CAB to the agencies to which CAB functions are transferred.

SECTION 11.—EFFECT ON PERSONNEL

Provides that transferred employees are entitled to have the CAB evaluations used in determining merit pay, in addition to the evaluations of the new agency.

SECTION 12.—SAVINGS PROVISION

Provides for the continuation of all effective CAB orders and proceedings after termination of the CAB.

SECTION 13.—DEFINITIONS

Definition of "agency" and "function" for purposes of this title.

SECTION 14.—ACCESS FOR HANDICAPPED PERSONS

This section requires the Secretary of Transportation to consult with the Architectural and Transportation Barriers Compliance Board before issuing rules that deal with access of the handicapped to airports or air transportation.

SECTION 15.—STUDIES AND REPORTS

Provides that the CAB (later DOT) may undertake studies to investigate practices which may hinder the public interest in air transportation. The Committee's concerns focus on those situations where the competitive market forces appear not to be properly at work. Of particular interest is the threat of "unfair, deceptive, predatory and anticompetitive practices," as outlined by section 102 of the ADA.

While the Committee notes that this section does not require DOT to do anything, with the decision to institute any such study belonging to the Secretary of Transportation, the Committee believes that DOT should entertain any reasonable petition of a community, airport authority, or public official. It is also important that DOT work to complete these studies within a reasonable period of time in order that it be responsive to the circumstances in question.

SECTION 16.—WASHINGTON DULLES AIRPORT STUDY

Requires the Secretary of Transportation to conduct a study of methods of transporting passengers to and from Washington Dulles Airport.

SECTION 17.—ALASKA ESSENTIAL AIR SERVICE

This section would require DOT to obtain the approval of the state of Alaska before changing the type of aircraft specified in the CAB's essential air service order for Alaska (80–1–167).

Rollcall Votes in Committee

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following record votes during its consideration of S. 2796:

An amendment offered by Senator Stevens concerning essential air service in the State of Alaska was adopted by a rollcall vote of 7 yeas and 6 nays as follows:

YEAS—7	NAYS—6
Mrs. Kassebaum	Mr. Packwood
Mr. Pressler	Mr. Goldwater
Mr. Gorton	Mr. Hollings
Mr. Stevens [1]	Mr. Exon
Mr. Kasten [1]	Mr. Heflin [1]
Mr. Trible	Mr. Lautenberg
Mr. Ford [1]	

[1] By proxy.

An amendment offered by Senator Exon to provide a mechanism to allow the CAB, and its successor, to study and report on whether any aspect of air transportation furthers or hinders the public interest as set forth in section 102 of the Federal Aviation Act of 1958 was adopted by a rollcall vote of 11 yeas and 5 nays as follows:

YEAS—11	NAYS—5
Mr. Danforth	Mr. Packwood
Mrs. Kassebaum	Mr. Goldwater
Mr. Pressler	Mr. Gorton
Mr. Stevens [1]	Mr. Kasten [1]
Mr. Hollings	Mr. Trible
Mr. Inouye	
Mr. Ford [1]	
Mr. Riegle [1]	
Mr. Exon	
Mr. Heflin [1]	
Mr. Lautenberg	

[1] By proxy.

A motion to favorably report the bill, as amended, was adopted on a rollcall vote of 15 yeas and no nays as follows:

YEAS—15	NAYS—0
Mr. Packwood	
Mr. Goldwater	
Mrs. Kassebaum	
Mr. Pressler	
Mr. Gorton	
Mr. Stevens [1]	
Mr. Kasten [1]	
Mr. Trible	
Mr. Hollings	
Mr. Inouye [1]	
Mr. Ford [1]	
Mr. Riegle [1]	
Mr. Exon [1]	
Mr. Heflin [1]	
Mr. Lautenberg	

[1] By proxy.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

Federal Aviation Act of 1958

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Title I—General Provisions

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(c) *Studies and reports.*

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Title IV—Air Carrier Economic Regulation

* * * * * * *

[Sec. 411. Methods of competition.]
Sec. 411. Methods of competition.
(a) Investigations.
(b) Incorporation by reference.

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TITLE I—GENERAL PROVISIONS

DEFINITIONS

SEC. 101. As used in this Act, unless the context otherwise requires—
(1) * * *

* * * * * * *

[(11) "All-cargo air service" means—

[(A) the carriage by aircraft of only (i) property as a common carrier for compensation or hire, or (ii) mail, or both, in commerce between a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same territory or possession of the United States, or the District of Columbia;

[(B) the carriage by aircraft of only (i) property as a common carrier for compensation or hire, or (ii) mail, or both, in commerce between a place in any State of the United States or the District of Columbia and any place in the Commonwealth of Puerto Rico or the Virgin Islands or between a place in the Commonwealth of Puerto Rico and a place in the Virgin Islands;

whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.]

(11) "All-cargo air service" means the carriage by aircraft in interstate or overseas air transportation of only property or mail, or both.

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CONSIDERATION OF MATTERS IN PUBLIC INTEREST BY BOARD GENERAL FACTORS FOR CONSIDERATION

SEC. 102. (a) * * *

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STUDIES AND REPORTS

(c) The Board may, upon its own initiative or upon the reasonable petition of any person directly affected, undertake such studies as may be necessary to determine the extent to which any aspect of air transportation furthers or hinders the public interest as set forth in this section. In undertaking this review, the Board shall conclude its consideration of all relevant factors within 120 days of receipt of the petition. The results of any such study, together with such recommendations as the Board may deem necessary, shall be forwarded to the petitioner, air carrier and appropriate Committees of the Congress.

* * * * * * *

PUBLIC RIGHT OF TRANSIT

SEC. 104. There is hereby recognized and declared to exist in behalf of any citizen of the United States a public right of freedom of transit through the navigable airspace of the United States. *In the further-*

ance of such right, the Board or the Secretary, as the case may be shall consult with the Architectual and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973, prior to issuing or amending any order, rule, regulation, or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped persons.

* * * * * * *

FEDERAL PREEMPTION

PREEMPTION

SEC. 105. (a) (1) Except as provided in paragraph (2) of this subsection, no State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier having authority under title IV of this Act to provide [interstate] air transportation.

TITLE IV—AIR CARRIER ECONOMIC REGULATION

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ACCOUNTS, RECORDS, AND REPORTS

FILING OF REPORTS

SEC. 407. (a) * * *

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INSPECTION OF ACCOUNTS AND PROPERTY

(e) [The Board shall at all times have access to all lands, buildings, and equipment of any air carrier or foreign air carrier and to all accounts, records, and memorandums, including all documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by air carriers, foreign air carriers, or ticket agents and it may employ special agents or auditors, who shall have authority under the orders of the Board to inspect and examine any and all such lands, buildings, equipment, accounts, records, and memorandums.] *The Board shall have access to all lands, buildings, and equipment of any air carrier or foreign air carrier when necessary for a determination under section 401, 402, 418, or 419 of this title that such carriers is fit, willing, and able. The Board shall at all times have access to all accounts, records and memorandums, including all documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by air carriers, foreign air carriers, or ticket agents. The Board may employ special agents or auditors, who shall have authority under the orders of the Board to inspect and examine lands, buildings, equipment, accounts, records, and memorandums to which the Board has access under this subsection.* The provisions of this section shall

apply, to the extent found by the Board to be reasonably necessary for the administration of this Act, to persons having control over any air carrier, or affiliated with any air carrier within the meaning of section 5(8) of the Interstate Commerce Act, as amended.

* * * * * * *

METHODS OF COMPETITION

INVESTIGATIONS

SEC. 411. (*a*) The Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the Board shall find, after notice and hearing, that such air carrier, foreign air carrier, or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition.

INCORPORATION BY REFERENCE

(b) Any air carrier may incorporate by reference in any ticket or other written instrument any of the terms of the contract of carriage in interstate and overseas air transportation, to the extent such incorporation by reference is in accordance with regulations issued by the Board.

POOLING AND OTHER AGREEMENTS

FILING AND APPROVAL OF AGREEMENTS

SEC. 412. (a) (1) * * *

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MUTUAL AID AGREEMENTS

(c) (1) Notwithstanding any other provision of law, any mutual aid agreement between air carriers which was approved by the Board before the date of enactment of this subsection and which is in effect on such date of enactment shall be deemed disapproved and not in effect on and after such date of enactment.

(2) No air carrier shall enter into any mutual aid agreement with any other air carrier, unless such air carrier files a true copy of such agreement with the Board and the Board approves such agreement pursuant to the provisions of this session. Notwithstanding subsection [(c)](*a*) of this section, the Board shall not approve any such agreement unless such agreement provides (A) that any air carrier will not receive payments for any period which exceed 60 per centum of the direct operating expenses during such period, (B) that benefits under the agreement are not payable for more than eight weeks during any labor strike, and that such benefits may not be for losses incurred

during the first thirty days of any labor strike, and (C) that any party to such agreement will agree to submit the issues causing any labor strike to binding arbitration pursuant to the Railway Labor Act if the striking employees request such binding arbitration.

* * * * * * *

CERTIFICATE FOR ALL-CARGO AIR SERVICE

APPLICATION

SEC. 418. (a)(1) * * *

* * * * * * *

ISSUANCE AND REVOCATION OF CERTIFICATE

(b)(1)(A) Not later than sixty days after any application is submitted pursuant to paragraph (1), (2), or (3) of subsection (a) of this section, the Board shall issue a certificate under this section authorizing the all-cargo air service covered by the application.

(B) No later than one hundred and eighty days after any application is submitted pursuant to paragraph (4) of subsection (a) of this section, the Board shall issue a certificate under this section authorizing the whole or any part of the all-cargo air service covered by the application unless it finds that the applicant is not fit, willing, and able to provide such service and to comply with any rules and regulations promulgated by the Board.

(2) Any certificate issued by the Board under this section may contain such reasonable conditions and limitations as the Board deems necessary, except that such terms and conditions shall not restrict the points which may be served, or the rates which may be charged by the holder of such certificate.

[(3) Notwithstanding any other provision of this section, no certificate issued by the Board under this section shall authorize all-cargo air service between any pair of points both of which are within the State of Alaska or the State of Hawaii.**]**

* * * * * * *

SMALL COMMUNITY AIR SERVICE

GUARANTEED ESSENTIAL AIR TRANSPORTATION

SEC. 419. (a) * * *

* * * * * * *

LEVEL OF SAFETY

(c)(1) For purposes of this subsection the term "commuter air carrier" means an air carrier exempt from any requirement of this Act under section **[**416(b)(3)**]** *416(b)(4)* of this title.

(2) Notwithstanding section 416(b) of this title, the Board shall not provide any compensation under this section to any commuter air carrier to provide service to any eligible point, and the Board shall prohibit any commuter air carrier from providing service to any eligible point, unless the Board determines that such commuter air carrier—

(A) is fit, willing, and able to perform such service; and

(B) that all aircraft which will be used to perform such service and all operations relating to such service will conform to the safety standards established by the Administrator under paragraph (3) of the subsection.

* * * * * * *

DEFINITION

(f) For purposes of this section, the term "essential air transportation" means scheduled air transportation of persons to a point provided under such criteria as the Board determines satisfies the needs of the community concerned for air transportation to one or more communities of interest and insures access to the Nation's air transportation system, at rates, fares, and charges which are not unjust, unreasonable, unjustly discriminatory, unduly preferential, or unduly prejudicial, and—

(1) with respect to air transportation to any point (other than in the State of Alaska), in no case shall essential air transportation be specified as fewer than two daily round trips, 5 days per week, or the level of service provided by air carriers to such point based on the schedules of such air carriers in effect for calendar year 1977, which ever is less; and

[(2) with respect to air transportation to any point in Alaska, essential air transportation shall not be specified at a level of service less than that which existed for such point during calendar year 1976, or two round trips per week, whichever is greater, unless otherwise specified under an agreement between the Board and the State agency of the State of Alaska, after consultation with the community affected.]

TITLE XIII—AVIATION INSURANCE

* * * * * * *

Administrative Powers of Secretary

REGULATORY AND SETTLEMENT

SEC. 1307. (a) The Secretary, in the administration of this title, may issue such policies, rules, and regulations as he deems proper and, subject to the following provisions of this subsection, may adjust and pay losses, compromise and settle claims, whether in favor of or against the United States and pay the amount of any judgment rendered against the United States in any suit, or the amount of any settlement agreed upon, in respect of any claim under insurance authorized by this title. In the case of any aircraft which is insured under the provisions of this title, (1) the policy shall specify a stated amount to be paid in the event of total loss, and such stated amount shall not exceed an amount determined by the Secretary [, after consultation with the Civil Aeronautics Board,] to represent the fair and reasonable value of the aircraft, and (2) the amount of any claim which is compromised, settled, adjusted, or paid shall in no event exceed such stated amount.

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"(2) with respect to air transportation to any point in Alaska, essential air transportation shall neither be specified at a level of service nor operated with aircraft of lesser seating and cargo capacity than provided for in CAB Order 80-1-167 and its Appendices unless otherwise specified under an agreement between the Department of Transportation and the State of Alaska, after consultation with the community affected.".

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TITLE XVI—SUNSET PROVISIONS

TERMINATION OF CIVIL AERONAUTICS BOARD AND TRANSFER OF CERTAIN FUNCTIONS

TERMINATION OF AUTHORITY

SEC. 1601. (a)(1) * * *

* * * * * * *

(3) Title II of this Act (*other than section 204*) shall cease to be in effect on January 1, 1985.

(4) The following provisions of this Act (to the extent such provisions relate to interstate and overseas air transportation) and the authority of the Board with respect to such provisions (to the same extent) shall cease to be in effect on January 1, 1985:

(A) Sections 401(l) and (m) and 405(b), and (c), and (d) of this Act (except insofar as such sections apply to the transportation of mail between two points both of which are within the State of Alaska).

(B) Section 403 of this Act.

(C) Section 404 of this Act (except insofar as such section requires air carriers to provide safe and adequate service).

(5) The following provisions of this Act and the authority of the Board with respect to such provisions shall cease to be in effect on January 1, 1985:

(A) Sections 407(b) and (c) of this Act.

(B) Section 410 of this Act.

(C) Section 417 of this Act.

(D) Sections 1002(d), (e), (g), (h), and (i) of this Act (except insofar as any of such sections relate to foreign air transportation).

(6) Sections 412(a) and (b) of this Act (to the extent such sections relate to interstate and overseas air transportation) and section 414 of this Act (to the extent such section relates to orders made under sections 412(a) and (b) with respect to interstate and overseas air transportation) and the authority of the Secretary of Transportation under such sections (to the same extent) shall cease to be in effect on January 1, 1989.

(7) Sections 408 and 409 of this Act and section 414 of this Act (relating to such sections 408 409) and the authority of the Secretary of Transportation under such sections (to the same extent) shall cease to be in effect on January 1, 1989.

(8) Sections 401(l) and (m) and 405(b), (c) and (d) of this Act (to the extent such sections apply to the transportation of mail between two points both of which are within the State of Alaska) shall cease to be in effect on January 1, 1989.

TRANSFER OF CERTAIN AUTHORITY

(b)(1) The following authority of the Board is transferred to the following Federal departments and instrumentalities:

(A) The authority of the Board under section 406 (b)(3) and (c) of this Act to provide compensation for air transportation to small communities and under section 419 of this Act is transferred to the Department of Transportation.

(B) The authority of the Board under this Act with respect to foreign air transportation is transferred to the Department of Transportation which shall exercise such authority in consultation with the Department of State.

(C) The authority of the Board under sections 408 and 409 of this Act, the authority of the Board under section 412 of this Act, and the authority of the Board under section 414 of this Act (relating to such sections 408, 409, and 412) is transferred to the Department of [Justice] *Transportation.*

(D) The authority of the Board under this Act with respect to the determination of the rates for the carriage of mails in interstate and overseas air transportation *(other than for the carriage of mails between any two points both of which are within the State of Alaska)* is transferred to the Postal Service and such authority shall be exercised through negotiations or competitive bidding.

(E) All authority of the Board under this Act which is not terminated under subsection (a) of this section on or before January 1, 1985, and is not otherwise transferred under this subsection is transferred to the Department of Transportation.

(2) Any authority transferred under paragraph (1) of this subsection shall take effect on January 1, 1985.

(3) The authority of the Secretary of Transportation under this Act with respect to the determination of the rates for the carriage of mails between any two points both of which are within the State of Alaska is transferred to the Postal Service and such authority shall be exercised through negotiations or competitive bidding. The transfer of authority under this paragraph shall take effect on January 1, 1989.

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SECTION 329 OF TITLE 49, UNITED STATES CODE

§ 329. Transportation information

(a) The Secretary of Transportation may collect and collate transportation information the Secretary decides will contribute to the improvement of the transportation system of the United States. To the greatest practical extent, the Secretary shall use information available

from departments, agencies, and instrumentalities of the United States Government and other sources. To the extent practical, the Secretary shall make available to other Government departments, agencies, and instrumentalities and to the public information collected under this subsection.

(b) The Secretary shall—

[(1) collect and disseminate information on civil aeronautics (other than that collected and disseminated by the National Transportation Safety Board under title VII of the Federal Aviation Act of 1958 (49 U.S.C. 1441 et seq.) or the Civil Aeronautics Board under title IV of that Act (49 U.S.C. 1371 et seq.));]

(1) collect and disseminate information on civil aeronautics (other than that collected and disseminated by the National Transportation Safety Board under title VII of the Federal Aviation Act of 1985 (49 U.S.C. 1441 et seq.)) including, at a minimum, information (A) the origin and destination of passengers in interstate and overseas air transportation (as those terms are used in such Act), and (B) the number of passengers traveling by air between any two points in interstate and overseas air transportation; except that in no case shall the Secretary require an air carrier to provide information on the number of passengers or the amount of cargo on a specific flight if the flight and the flight number under which such flight operates are used solely for interstate or overseas air transportation and are not used for providing essential air transportation under section 419 of the Federal Aviation Act of 1958;

(2) study the possibilities of developing air commerce and the aeronautical industry; and

(3) exchange information on civil aeronautics with governments of foreign countries through appropriate departments, agencies, and instrumentalities of the Government.

* * * * * * *

SECTION 11 OF THE INTERNATIONAL AVIATION FACILITIES ACT

SEC. 11. The Secretary of Transportation shall survey the charges made to air carriers by foreign governments or other foreign entities for the use of airport property or airway property in foreign air transportation. If the Secretary of Transportation determines at any time that such charges unreasonably exceed comparable charges for furnishing such airport property or airway property in the United States or are otherwise discriminatory, he shall submit a report on such cases promptly to the Secretary of State [and the Civil Aeronautics Board] and the Secretary of State, in collaboration with the [Civil Aeronautics Board,] *Secretary of Transportation*, shall promptly undertake negotiations with the foreign country involved to reduce such charges or eliminate such discriminations. If within a reasonable period such charges are not reduced or such discriminations eliminated through negotiations, the Secretary of State shall promptly report such instances to the Secretary of Trans-

portation who shall determine compensating charges equal to such excessive or discriminatory charges. Such compensating charges shall, with the approval of the Secretary of State, be imposed on the foreign air carrier or carriers of the country concerned by the Secretary of the Treasury as a condition to acceptance of the general declaration at the time of landing or takeoff of aircraft of such foreign air carrier or carriers. The amounts so collected shall accrue to an account established for that purpose by the Secretary of the Treasury. Payments shall be made from that account to air carriers in such amounts as shall be certified by the Secretary of Transportation in accordance with such regulations as he shall adopt to compensate such air carriers for excessive or discriminatory charges paid by them to the foreign countries involved.

Section 2 of the International Air Transportation Fair Competitive Practices Act of 1974

DISCRIMINATORY AND UNFAIR COMPETITIVE PRACTICES

Sec. 2. (a) United States air carriers operating in foreign air transportation perform services of vital importance to the foreign commerce of the United States including its balance of payments, to the Postal Service, and to the national defense. Such carriers have become subject to a variety of discriminatory and unfair competitive practices in their competition with foreign air carriers. The Department of State, the Department of the Treasury, the Department of Transportation, [the Civil Aeronautics Board,] and other departments or agencies, therefore, each shall keep under review, to the extent of their respective functions, all forms of discrimination or unfair competitive practices to which United States air carriers are subject in providing foreign air transportation services and each shall take all appropriate actions within its jurisdiction to eliminate such forms of discrimination or unfair competitive practices found to exist.

(b)(1) Whenever the [Civil Aeronautics Board,] *Secretary of Transportation*, upon complaint or upon its own initiative, determines that a foreign government or instrumentality, including a foreign air carrier (A) engages in unjustifiable or unreasonable discriminatory, predatory, or anticompetitive practices against a United States air carrier or (B) imposes unjustifiable or unreasonable restrictions on access of a United States air carrier to foreign markets, the [Board] *Secretary* may take such action as it deems to be in the public interest to eliminate such practices or restrictions. Such actions may include, but are not limited to, the denial, transfer, alteration, modification, amendment, cancellation, suspension, limitation, or revocation of any foreign air carrier permit or tariff pursuant to the powers of the [Board] *Secretary* under the Federal Aviation Act of 1958.

(2) Any United States air carrier or any agency of the Government of the United States may file a complaint under this section with the [Civil Aeronautics Board.] *Secretary of Transportation*. The [Board] *Secretary* shall approve, deny, dismiss, set such complaint for hearing or investigation, or institute other proceedings proposing remedial action within 60 days after receipt of the complaint. The

[Board] *Secretary* may extend the period for taking such action for an additional period or periods of up to 30 days each if the [Board] *Secretary* concludes that it is likely that the complaint can be satisfactorily resolved through negotiations with the foreign government or instrumentality during such additional period, but in no event may the aggregate period for taking action under this subsection exceed 180 days from receipt of the complaint. In considering any complaint, or in any proceedings under its own initiative, under this subsection the [Board] *Secretary* shall (A) solicit the views of the Department of State [and the Department of Transportation] and (B) provide any affected air carrier or foreign air carrier with reasonable notice and such opportunity to file written evidence and argument as is consistent with acting on the complaint within the time limits set forth in this subsection.

(3) Any action proposed by the [Board] *Secretary* pursuant to this section shall be transmitted to the President pursuant to section 801 of the Federal Aviation Act of 1958 (49 U.S.C. 1461).

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(d) The [Civil Aeronautics Board] *Secretary of Transportation* shall report annually to Congress on the actions that have been taken under subsection (a) and on the continuing program to eliminate discriminations and unfair competitive practices faced by United States carriers in foreign air transportation. [The Secretaries of State, Treasury, and Transportation shall furnish to the Civil Aeronautics Board such information as may be necessary to prepare the report required by this subsection.] *The Secretaries of State and Treasury shall furnish to the Secretary of Transportation such information as may be necessary to prepare the report required by this subsection.*

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart D—Pay and Allowances

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CHAPTER 53—PAY RATES AND SYSTEMS

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Subchapter II—Executive Schedule Pay Rates

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§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate deter-

mined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

* * * * * * *

[Chairman, Civil Aeronautics Board.]

* * * * * * *

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

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[Members, Civil Aeronautics Board.]

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SECTION 3726 OF TITLE 31, UNITED STATES CODE

§ 3726. Payment for transportation

(a) A carrier or freight forwarder presenting a bill for transporting an individual or property for the United States Government shall be paid before the Administrator of General Services conducts an audit. A claim under this section shall be allowed only if it is received by the Administrator not later than 3 years (excluding time of war) after the later of the following dates:

(1) accrual of the claim;

(2) payment for the transportation is made;

(3) refund for an overpayment for the transportation is made; or

(4) a deduction under subsection (b) of this section is made.

(b) Not later than 3 years (excluding time of war) after the time a bill is paid, the Government may deduct from an amount subsequently due a carrier or freight forwarder an amount paid on the bill that was greater than the rate allowed under—

(1) a lawful tariff on file with the Interstate Commerce Commission, the [Civil Aeronautics Board.] *Secretary of Transportation with respect to foreign air transportation (as defined in the Federal Aviation Act of 1958)*, the Federal Maritime Commission, or a State tranportation authority; or

(2) sections 10721–10724 of title 49 or an equivalent arrangement or an exemption.

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TITLE 39, UNITED STATES CODE

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PART IV—MAIL MATTER

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CHAPTER 34—ARMED FORCES AND FREE POSTAGE

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§ 3401. Mailing privileges of members of Armed Forces of the United States and of friendly foreign nations

(a) * * *

(b) There shall be transported by air, between Armed Forces post offices which are located outside the 48 contiguous States of the United States or between any such Armed Forces post office and the point of embarkation or debarkation within the United States, the territories and possessions of the United States in the Pacific area, the Commonwealth of Puerto Rico, or the Virgin Islands on a space available basis, on scheduled United States air carriers at rates fixed and determined by the [Civil Aeronautics Board] *Secretary of Transportation* in accordance with section 1376 of title 49, the following categories of mail matter:

(1) (A) letter mail or sound-recorded communications having the character of personal correspondence;

(B) parcels not exceeding 15 pounds in weight and 60 inches in length and girth combined; and

(C) publications entitled to a periodical publication rate published once each week or more frequently and featuring principally current news of interest to members of the Armed Forces and the general public,

which are mailed at or addressed to any such Armed Forces post office;

(2) parcels not exceeding 70 pounds in weight and 100 inches in length and girth combined, which are mailed at any such Armed Forces post office; and

(3) parcels exceeding 15 pounds but not exceeding 70 pounds in weight and not exceeding 100 inches in length and girth combined, including surface-type official mail, which are mailed at or addressed to any such Armed Forces post office where adequate surface transportation is not available.

Whenever adequate service by scheduled United States air carriers is not available to provide transportation of mail matter by air in accordance with this subsection, the transportation of such mail may be authorized by other than scheduled United States air carriers.

(c) Any parcel, other than a parcel mailed at a rate of postage requiring priority of handling and delivery, not exceeding 30 pounds in weight and 60 inches in length and girth combined, which is mailed at or addressed to any Armed Forces post office established under section 406(a) of this title, shall be transported by air on a space available basis on scheduled United States air carriers at rates fixed and determined by the [Civil Aeronautics Board] *Secretary of Transportation* in accordance with section 1376 of title 49, upon payment of a fee for such air transportation in addition to the rate of postage otherwise applicable to such a parcel not transported by air. If adequate service

by scheduled United States air carriers is not available, any such parcel may be transported by air carriers other than scheduled United States air carriers.

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PART V—TRANSPORTATION OF MAIL

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CHAPTER 50—GENERAL

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§ 5005. Mail transportation

(a) The Postal Service may obtain mail transportation service—

(1) from common carriers by rail and motor vehicle or persons as provided in chapter 52 of this title;

(2) from air carriers as provided in chapter 54 of this title;

(3) from water carries as provided in chapter 56 of this title; and

(4) by contract from any person (as defined in section 5201(7) of this title) or carrier for surface and water transportation under such terms and conditions as it deems appropriate, subject to the provisions of this section.

(b)(1) Contracts for the transportation of mail procured under subsection (a)(4) of this section shall be for periods not in excess of 4 year (or where the Postal Service determines that special conditions or the use of special equipment warrants, not in excess of 6 years) and shall be entered into only after advertising a sufficient time previously for proposals. The Postal Service, with the consent of the holder of any such contract, may adjust the compensation allowed under that contract for increased or decreased costs resulting from changed conditions occurring during the term of the contract.

(2) A contract under subsection (a)(4) of this section may be renewed at the existing rate by mutual agreement between the contractor or subcontractor and the Postal Service.

(3) Any contract between the Postal Service and any carrier or person for the transportation of mail shall be available for inspection in the office of the Postal Service and either the Interstate Commerce Commission or the [Civil Aeronautics Board,] *Secretary of Transportation if for the carriage of mail in foreign air transportation (as defined in section 101 of the Federal Aviation Act of 1958)*, as appropriate, and in post offices on the post roads involved, as determined by the Postal Service, at least 15 days prior to the effective date of the contract.

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CHAPTER 54—TRANSPORTATION OF MAIL BY AIR

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§ 5401. Authorization

(a) The Postal Service is authorized to provide for the safe and expeditious transportation of mail by aircraft.

(b) Except as otherwise provided in section 5402 of this title, the Postal Service may make such rules, regulations, and orders consistent with sections 1301–1542 of title 49, or any order, rule, or regulation made by the [Civil Aeronautics Board] *Secretary of Transportation* thereunder, as may be necessary for such transportation.

§ 5402. Contracts for transportation of mail by air

(a) The Postal Service may contract with any certificated air carrier, without advertising for bids, in such manner and under such terms and conditions as it deems appropriate, for the transportation of mail by aircraft between any of the points *in foreign air transportation* between which the carrier is authorized by the [Civil Aeronautics Board] *Secretary of Transportation* to engage in the transportation of mail. Such contracts shall be for the transportation of at least 750 pounds of mail per flight, and no more than [10 percent of the domestic mail transported under any such contract or] 5 percent based on weight, of the international mail transported under any such contract shall consist of letter mail. Any such contract shall be filed with the [Civil Aeronautics Board] *Secretary of Transportation* not later than 90 days before its effective date. Unless the [Civil Aernautics Board] *Secretary of Transportation* shall determine otherwise (under criteria prescribed by section 1302 of title 49) not later than 10 days prior to the effective date of the contract, such contract shall become effective.

(b) When the Postal Service deems that the transportation of mail by aircraft is required between points *in foreign air transportation* between which the [Civil Aeronautics Board] *Secretary of Transportation* has not authorized an air carrier or combination of air carriers to engage in the transportation of mail, it may contract with any air carrier in such manner and under such terms and conditions as it may deem appropriate for the transportation of any class or classes of mail. The transportation of mail under contracts entered into under this subsection is not, except for sections 1371(k) and 1386(b) of title 49, air transportation within the provisions of sections 1301–1542 of title 49. The Postal Service shall cancel such contract, in whole or in respect to certain points as the certificate shall require, upon the issuance by the [Civil Aeronautics Board] *Secretary of Transportation* of an authorization under sections 1371–1386 of title 49 to any air carrier to engage in the transportation of mail by aircraft between any of the points named in the contract, and the inauguration of scheduled service by such carrier.

(c) If the Postal Service determines that service by certificated air carriers or combination of air carriers between any pair or pairs of points *in foreign air transportation* is not adequate for its purposes, it may contract for a period of not more than 4 years, without advertising for bids, in such manner and under such terms and conditions as it may deem appropriate, with any air taxi operator or combination thereof for such air transportation service. Contracts made under this subsection may be renewed at the existing rate by mutual agreement between the holder and the Postal Service. The Postal Service, with the consent of the air taxi operator, may adjust the compensation under such contracts for increased or decreased costs occasioned by changed condi-

tions occurring during the contract term. The Postal Service shall cancel such a contract when the [Civil Aeronautics Board] *Secretary of Transportation* authorizes an additional certificated carrier or carriers to provide service between any pair or pairs of points covered by the contract, and such carrier or carriers inaugurate schedules adequate for its purposes.

(d) The Postal Service may contract with any air carrier for the transportation of mail by aircraft in interstate and overseas air transportation either through negotiations or competitive bidding.

(e) For purposes of this section, the terms "air carrier", "interstate air transportation", "overseas air transportation", and "foreign air transportation" have the meanings given such terms in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301).

(f) During the period beginning January 1, 1985, and ending January 1, 1989, the authority of the Secretary of Transportation under subsections (a), (b), and (c) of this section shall also apply, and the authority of the Postal Service under subsection (d) shall not apply, to the transportation of mail by aircraft between any two points both of which are within the State of Alaska and between which the air carrier is authorized by the Secretary to engage in the transportation of mail.

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SECTION 3502 OF TITLE 44, UNITED STATES CODE

§ 3502. Definitions

As used in this chapter—

(1) * * *

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(10) the term "independent regulatory agency" means the Board of Governors of the Federal Reserve System, [the Civil Aeronautics Board.] the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Home Loan Bank Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

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SECTION 15 OF THE ANIMAL WELFARE ACT

SEC. 15. (a) The Secretary shall consult and cooperate with other Federal departments, agencies, or instrumetalities concerned with the

welfare of animals used for research, experimentation or exhibition, or administration of statutes regulating the transportation in commerce or handling in connection therewith of any animals when establishing standards pursuant to section 13 and in carrying out the purposes of this Act.

Before promulgating any standard governing the air transportation and handling in connection therewith, of animals, the Secretary shall consult with the Secretary of Transportation who shall have the authority to disapprove any such standard if he notifies the Secretary, within 30 days after such consultation, that changes in its provisions are necessary in the interest of flight safety. The Interstate Commerce Commission, [the Civil Aeronautics Board,] *the Secretary of Transportation*, and the Federal Maritime Commission, to the extent of their respective lawful authorities, shall take such action as is appropriate to implement any standard established by the Secretary with respect to a person subject to regulation by it.

(b) The Secretary is authorized to cooperate with the officials of the various States or political subdivisions thereof in carrying out the purposes of this Act and of any State, local, or municipal legislation or ordinance on the same subject.

SECTION 203 OF THE AGRICULTURAL MARKETING ACT OF 1946

SEC. 203. The Secretary of Agriculture is directed and authorized:

(a) * * *

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(j) To assist in improving transportation services and facilities and in obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for agricultural products and farm supplies by making complaint or petition to the Interstate Commerce Commission, the Maritime Commission, [the Civil Aeronautics Board,] or other Federal or State transportation regulatory body, or the Secretary of Transportation, with respect to rates, charges, tariffs, practices, and services, or by working directly with individual carriers or groups or carriers.

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TITLE 10, UNITED STATES CODE

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Subtitle B—Army

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PART IV—SERVICE, SUPPLY, AND PROCUREMENT

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CHAPTER 447—TRANSPORTATION

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§ 4746. Civilian personnel in Alaska

Persons residing in Alaska who are and have been employed there by the United States for at least two years, and their families, may be transported on vessels or airplanes operated by Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels or airplanes operated by any military transport agency of the Department of Defense, if—

(1) the Secretary of the Army considers that accommodations are available;

(2) the transportation is without expense to the United States;

(3) the transportation is limited to one round trip between Alaska and the United States during any two-year period, except in an emergency such as sickness or death; and

(4) in case of travel by air—

(A) the [Civil Aeronautics Board] *Secretary of Transportation* has not certified that commercial air carriers of the United States that can handle the transportation are operating between Alaska and the United States; and

(B) the transportation cannot be reasonably handled by a United States commercial air carrier.

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Subtitle D—Air Force

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PART IV—SERVICE, SUPPLY, AND PROCUREMENT

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CHAPTER 947—TRANSPORTATION

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§ 9746. Civilian personnel in Alaska

Persons residing in Alaska who are and have been employed there by the United States for at least two years, and their families, may be transported on airplanes operated by Air Force transport agencies or, within bulk space allocations made to the Department of the Air Force, on vessels or airplanes operated by any military transport agency of the Department of Defense, if—

(1) the Secretary of the Air Force considers that accommodations are available;

(2) the transportation is without expense to the United States;

(3) the transportation is limited to one round trip between Alaska and the United States during any two-year period, except in an emergency such as sickness or death; and

(4) in case of travel by air—

(A) the [Civil Aeronautics Board] *Secretary of Transportation* has not certified that commercial air carriers of the

United States that can handle the transportation are operating between Alaska and the United States; and

(B) the transportation cannot be reasonably handled by a United States commercial air carrier.

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CLAYTON ACT

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SEC. 7. That no person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock

or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the [Civil Aeronautics Board,] *Secretary of Transportation*, Federal Communications Commission, Federal Power Commission, Interstate Commerce Commission, the Securities and Exchange Commission in the exercise of its jurisdiction under section 10 of the Public Utility Holding Company Act of 1935, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission [, Secretary, or Board.] *or Secretary.*

* * * * * * *

SEC. 11. (a) That authority to enforce compliance with sections 2, 3, 7, and 8 of this Act by the persons respectively subject thereto is hereby vested in the Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the [Civil Aeronautics Board] *Secretary of Transportation* where applicable to air carriers and foreign air carriers subject to the [Civil Aeronautics Act of 1938] *Federal Aviation Act of 1958*; in the Federal Reserve Board where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce to be exercised as follows:

(b) Whenever the [Commission or Board] *Commission, Board, or Secretary* vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections 2, 3, 7, and 8 of this Act, it shall issue and serve upon such person and the Attorney General a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the [Commission or Board] *Commission, Board, or Secretary* requiring such person to cease and desist from the violation of the law so charged in said complaint. The Attorney General shall have the right to intervene and appear in said proceeding and any person may make application, and upon good cause shown may be allowed by the [Commission or Board] *Commission, Board, or Secretary*, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the [Commission or Board.] *Commission, Board, or Secretary.* If upon such hearing the [Commission or Board,] *Commission, Board,*

or Secretary, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock, or other share capital, or assets, held or rid itself of the directors chosen contrary to the provisions of sections 7 and 8 of this Act, if any there be, in the manner and within the time fixed by said order. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of United States, as hereinafter provided, the [Commission or Board] *Commission, Board, or Secretary* may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the [Commission or Board] *Commission, Board, or Secretary* may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the [Commission or Board] *Commission, Board, or Secretary* conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however*, That the said person may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

(c) Any person required by such order of the [commission or board] *Commission, board, or Secretary* to cease and desist from any such violation may obtain a review of such order in the court of appeals of the United States for any circuit within which such violation occurred or within which such person resides or carries on business, by filing in the court, within sixty days after the date of the service of such order, a written petition praying that the order of the [Commission or board] *Commission, board, or Secretary* be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the [commission or board,] *Commission, board, or Secretary* and thereupon the [commission or board] *Commission, board, or Secretary* shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the [commission or board] *Commission, board, or Secretary* until the filing of the record, and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the [commission or board.] *Commission, board, or Secretary* and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite.

The findings of the [commission or board] *Commission, board, or Secretary* as to the facts, if supported by substantial evidence, shall be conclusive. To the extent that the order of the [commission or board] *Commission, board, or Secretary* is affirmed, the court shall issue its own order commanding obedience to the terms of such order of the [commission or board.] *Commission, board, or Secretary.* If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the [commission or board] *Commission, board, or Secretary*, the court may order such additional evidence to be taken before the [commission or board] *Commission, board, or Secretary*, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The [commission or board] *Commission, board, or Secretary* may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and shall file such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(d) Upon the filing of the record with it the jurisdiction of the Court of Appeals to affirm, enforce, modify, or set aside orders of the [commission or board] *Commission, board, or Secretary* shall be exclusive.

(e) Such proceedings in the court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the [commission or board] *Commission, board, or Secretary* or judgment of the court to enforce the same shall in any way relieve or absolve any person from any liability under the antitrust laws.

(f) Complaints, orders, and other processes of the [commission or board] *Commission, board, or Secretary* under this section may be served by anyone duly authorized by the [commission or board] *Commission, board, or Secretary*, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (2) by leaving a copy thereof at the residence or the principal office or place of business of such person; or (3) by mailing by registered or certified mail a copy thereof addressed to such person at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered or certified mail as aforesaid shall be proof of the service of the same.

(g) Any order issued under subsection (b) shall become final—

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the [commission or board] *Commission, board, or Secretary* may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b); or

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the [commission or board] *Commission, board, or Secretary* had been affirmed, or the petition for review has been dismissed by the court of appeals, and no petition for certiorari has been duly filed; or

(3) upon the denial of a petition for certiorari, if the order of the [commission or board] *Commission, board, or Secretary* has been affirmed or the petition for review has been dismissed by the court of appeals; or

(4) upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the [commission or board] *Commission, board, or Secretary* be affirmed or the petition for review be dismissed.

(h) If the Supreme Court directs that the order of the commission or board be modified or set aside, the order of the [commission or board] *commission, board, or Secretary* rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the [commission or board] *commission, board, or Secretary* shall become final when so corrected.

(i) If the order of the [commission or board] *commission, board, or Secretary* is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been dully filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the [commission or board] *commission, board, or Secretary* rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the [commission or board] *commission, board, or Secretary* was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the [commission or board] *commission, board or Secretary* shall become final when so corrected.

(j) If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the [commission or board] *commission, board or Secretary* for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the [commission or board] *commission, board, or Secretary* rendered upon such rehearing shall become final in the same manner as though no prior order of the [commission or board] *commission, board, or Secretary* had been rendered.

(k) As used in this section the term "mandate", in a case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(l) Any person who violates any order issued by the [commission or board] *commission, board, or Secretary* under subsection (b) after such order has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States. Each separate violation of any such order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the [commission or board] *commission, board, or Secretary* each day of continuance of such failure or neglect shall be deemed a separate offense.

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CONSUMER CREDIT PROTECTION ACT

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TITLE I—CONSUMER CREDIT COST DISCLOSURE

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CHAPTER 1—GENERAL PROVISIONS

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§ 108. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under

(1) * * *

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(4) the Federal Aviation Act of 1958, by the [Civil Aeronautics Board] *Secretary of Transportation* with respect to any air carrier or foreign air carrier subject to that Act.

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TITLE VI—CONSUMER CREDIT REPORTING

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§ 621. Administrative enforcement

(a) * * *

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(b) Compliance with the requirements imposed under this title with respect to consumer reporting agencies and persons who use consumer reports from such agencies shall be enforced under—

(1) * * *

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(5) the Federal Aviation Act of 1958, by the [Civil Aeronautics Board] *Secretary of Transportation* with respect to any air carrier or foreign air carrier subject to that Act; and

(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

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TITLE VII—EQUAL CREDIT OPPORTUNITY

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§ 704. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under:

(1) * * *

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(5) The Federal Aviation Act of 1958, by the [Civil Aeronautics Board] *Secretary of Transportation* with respect to any air carrier or foreign air carrier subject to that Act.

TITLE VIII—DEBT COLLECTION PRACTICES

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§ 814. Administrative enforcement

(a) * * *

(b) Compliance with any requirements imposed under this title shall be enforced under—

(1) * * *

* * * * * * *

(5) the Federal Aviation Act of 1958, by the [Civil Aeronautics Board] *Secretary of Transportation* with respect to any foreign air carrier subject to that Act; and

(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

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SECTION 3 OF THE ACT OF JULY 19, 1940

AN ACT To encourage travel in the United States, and for other purposes

* * * * * * *

SEC. 3. The Secretary of the Interior is authorized to create an advisory committee to consist of a representative from each of the Departments of State, Agriculture, and Commerce, the Interstate Commerce Commission, [the Civil Aeronautics Authority,] and the Department of Transportation, as may be designated by such Departments or agencies, respectively, and such additional members, representatives of the various sections of the Nation, including transporta-

tion and accommodations agencies, not to exceed six members, to be appointed by the Secretary of the Interior to serve at his pleasure. Meetings of the committee shall be held at the request of the Secretary for the purpose of making recommendations concerning the promotion of tourist travel under the provisions of this Act. The members of the committee shall receive no compensation for their services as members, but shall be entitled to reimbursement for such necessary travel and other expenses in connection with their attendance at committee meetings as may be authorized or approved by the Secretary.

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INTERNAL REVENUE CODE OF 1954

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter A—Determination of Tax Liability

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PART IV—CREDITS AGAINST TAX

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Subpart B—Rules for Computing Credit for Investment in Certain Depreciable Property

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SEC. 47. CERTAIN DISPOSITIONS, ETC., OF SECTION 38 PROPERTY.

(a) GENERAL RULE.—Under regulations prescribed by the Secretary—

(1) EARLY DISPOSITION, ETC.—* * *

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(7) AIRCRAFT USED OUTSIDE THE UNITED STATES AFTER APRIL 18, 1969.—

(A) GENERAL RULE.—Any aircraft which was new section 38 property tax for the taxable year in which it was placed in service and which is used outside the United States under a qualifying lease or leases shall be treated as not ceasing to be section 38 property by reason of such use until such aircraft has been so used for a period or periods exceeding 3½ years in total. For purposes of the preceding sentence, the registration of such aircraft under the laws of a foreign country shall be treated as use outside the United States.

(B) COMPUTATION OF QUALIFIED INVESTMENT.—If an aircraft described in subparagraph (A) is disposed of or otherwise ceases to be section 38 property, the increase under paragraph (1) and the adjustment under paragraph (6) shall not be greater than the increase or adjustment which would result

if the qualified investment of such aircraft were based upon a useful life equal to the lesser of (i) the actual useful life of such aircraft with respect to the taxpayer, or, (ii) twice the number of full calendar months during which such aircraft was registered by the Administrator of the Federal Aviation Agency and was used in the United States, operated to and from the United States, or operated under contract with the United States. For purposes of the preceding sentence, an aircraft shall be treated as used in the United States for any calendar month beginning after such aircraft was placed in service, if such month is included in a taxable year ending before January 1, 1971, for which such aircraft was section 38 property (determined without regard to this paragraph).

(C) QUALIFYING LEASE DEFINED.—For purposes of subparagraph (A), the term "qualifying lease" means a lease from an air carrier (as defined in section 101 of the Federal Aviation Act of 1958, as amended (48 U.S.C. 1301)) which complies with the provisions of the Federal Aviation Act of 1958, as amended, and the rules and regulations promulgated by the [Civil Aeronautics Board] *Secretary of Transportation* thereunder, but only if such lease was executed after April 18, 1969.

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Subtitle F—Procedure and Administration

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CHAPTER 79—DEFINITIONS

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SEC. 7701. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) PERSON.—The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

* * * * * * *

(33) REGULATED PUBLIC UTILITY.—The term "regulated public utility" means—

(A) A corporation engaged in the furnishing or sale of—

(i) electric energy, gas, water, or sewage disposal services, or

(ii) transportation (not included in subparagraph (C)) on an intrastate, suburban, municipal, or interurban electric railroad, on an intrastate, municipal, or suburban trackless trolley system, or on a municipal or suburban bus system, or

(iii) transportation (not included in clause (ii)) by motor vehicle—

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political sub-

division thereof by an agency or instrumentality of the United States, by a public service or public utility commission or other similar body of the District of Columbia or of any State or political subdivision thereof, or by a foreign country or an agency or instrumentality or political subdivision thereof.

(B) A corporation engaged as a common carrier in the furnishing or sale of transportation of gas by pipe line, if subject to the jurisdiction of the Federal Power Commission.

(C) A corporation engaged as a common carrier (i) in the furnishing or sale of transportation by railroad, if subject to the jurisdiction of the Interstate Commerce Commission, or (ii) in the furnishing or sale of transportation of oil or other petroleum products (including shale oil) by pipe line, if subject to the jurisdiction of the Interstate Commerce Commission or if the rates for such furnishing or sale are subject to the jurisdiction of a public service or public utility commission or other similar body of the District of Columbia or of any State.

(D) A corporation engaged in the furnishing of telephone or telegraph service, if the rates for such furnishing or sale meet the requirements of subparagraph (A).

(E) A corporation engaged in the furnishing or sale of transportation as a common carrier by air, subject to the jurisdiction of the [Civil Aeronautics Board.] *Secretary of Transportation.*

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